



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 4, 1998

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-0336

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112378.

The Texas Department of Public Safety (the "department") received a request for a copy of the proposal submitted by a specific vendor, along with any additional submissions that were used as part of the evaluation process. The requestor also seeks a copy of the awarded contract which you have already released. You claim that the remaining requested information is excepted from disclosure under section 552.110 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Since the property and privacy rights of a third party may be implicated by the release of the requested information, this office notified DMR Trecom about the request for information. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision Nos. 575 (1990), 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). The party did not respond to our notification. However, DMR Trecom did send letters to the department claiming that the requested information is excepted from disclosure. Therefore, we will treat these letters as DMR Trecom's 552.305 response.

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision.

The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, which holds a "trade secret" to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business. . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

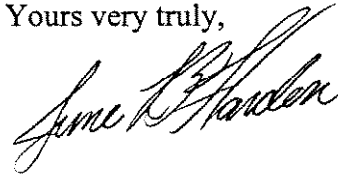
Restatement of Torts § 757 cmt. b (1939)¹; see *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), cert. denied, 358 U.S. 898 (1958). In this instance, neither the company nor the department has demonstrated that the requested information constitutes a trade secret. Open Records Decision No. 552 (1990) at 5 (party must establish prima facie case that information is trade secret). Therefore, the proposal and the Statement of Work must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous

¹The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and other involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." RESTATEMENT OF TORTS, § 757 cmt. b (1939); see also Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/gle

Ref.: ID# 112378

Enclosures: Submitted documents

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